

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 05-7506**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANTHONY ANDREWS,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Fox, Senior District Judge. (CR-01-27-F; CA-02-44-7-F)

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Submitted: February 28, 2006

Decided: April 7, 2006

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Before LUTTIG, KING, and DUNCAN, Circuit Judges.

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Affirmed on modified grounds by unpublished per curiam opinion.

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Anthony Andrews, Appellant Pro Se. Rudolf A. Renfer, Jr., Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Anthony Andrews appeals the district court's order construing his motion to compel as a 28 U.S.C. § 2255 motion, granting the Government's motion to dismiss it as successive, and denying his motion to recuse. We have reviewed the record and find that Andrews's motion should have been entertained as a motion to compel, rather than as a § 2255 motion. However, because the motion to compel was properly denied in any event, we find no reversible error. Accordingly, we deny Andrews's motions for abeyance and to recuse and affirm the district court's order on the modified grounds that the motion to compel was properly denied. See United States v. Andrews, Nos. CR-01-27-F; CA-02-44-7-F (E.D.N.C. Aug. 1, 2005). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED ON MODIFIED GROUNDS